IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.9562 OF 2004

Mr. Prabhudas Taraprasad Sharma, .. Petitioner

Vs

Devidas Taraprasad Sharma & ors. .. Respondents

Mr M.S.Karnik, for the petitioner.

Mr S.M.Gorwadkar, for respondent no.1.

CORAM : D.B.BHOSALE,J.

DATE : 8th December, 2004.

PC:

1. Heard the learned counsel for the parties.

2. This petition is directed against the order dated 20.11.2004 passed by the Jt Civil Judge Jr Dn., Nashik in the application filed by the petitioner-Judgment Debtor no.1 under section 47 of the C.P.C. In this case, admittedly, the final decree application was allowed by the 2nd Jt.Civil Judge, Sr. Dn. Nashik vide order dated 7.3.1998. That order was carried in Appeal and thereafter in SLP before the Apex Court. In the Appeal and the SLP the issue of excess execution was also raised. Mr Karnik, learned counsel for the petitioner, however, submits that the appeal and SLP was not filed by the petitioner and therefore the petitioner can maintain the application under section 47 of CPC.

Admittedly, the petitioner was a party in the appeal and in the SLP and the issue of excess execution was considered by this Court and the Apex Court. The Court below has considered the contentions urged by the petitioner in proper perspective and rejected the application for the reasons recorded in the impugned order and in particular paragraph 12 therein, which, to my mind, is just and proper. I see no reason to exercise the writ jurisdiction under Article 227 of the Constitution of India. The writ petition, therefore, fails and is dismissed as such.

(D.B.BHOSALE, J.)